

(2021) 04 P&H CK 0075
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 6856 Of 2021

Paramjeet Singh And Another	Vs	APPELLANT
District Magistrate, Gurugram, Haryana And Others		RESPONDENT

Date of Decision : 08-04-2021

Acts Referred:

Securitisation And Reconstruction Of Financial Assets And Enforcement Of Security Interest Act, 2002 — Section 13, 13(4), 14, 17, 17(1)
Constitution Of India, 1950 — Article 226, 227

Citation : (2021) 04 P&H CK 0075

Hon'ble Judges : Augustine George Masih, J; Ashok Kumar Verma, J

Bench : Division Bench

Advocate : Vineet Kumar Jakhar

Final Decision : Dismissed

Judgement

Augustine George Masih, J

Challenge in this writ petition is to the order dated 09.03.2021 (Annexure P-20) passed by the District Magistrate, Gurugram, Haryana-respondent No.1 whereby the application of M/s India Bulls Housing Finance Limited-respondent No.2 preferred under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as "the SARFAESI Act") has been allowed and the Duty Magistrate has been appointed to deliver the possession of the immovable property/secured assets as described in the said order within a period of one month from the date of the order.

2. It is the contention of learned counsel for the petitioners that the petitioners were the sureties/guarantors for the loan granted to the International Coil Limited (ICL), which obtained four loans as detailed in para 2 of the writ petition. Petitioners had tendered guarantee of their assets, which included Villa No.26, Block-Z, Tatvam Villa, Vipur World, Sector-48, Gurugram-122002, Haryana and Villa No.18, Block-Z, Tatvam Villa, Vipur World, Sector-48, Gurugram-122002,

Haryana, which is a subject matter of the present writ petition as the order dated 09.03.2021 relates to this property.

Notices served under the SARFAESI Act earlier under Section 13(4), which were challenged by the petitioners by filing CWP No.22078 of 2020 titled as Paramjeet Singh and another Versus M/S India Bulls Housing Finance Limited and others, which came up for hearing before this Court on 21.12.2020 (Annexure P-17), which was dismissed by passing the following order:-

"1. Mr. Vineet Jakhar, learned Counsel for the Petitioners is unable to satisfy the Court on why the Petitioners should not be relegated to pursue their statutory remedies under the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 before the Debts Recovery Tribunal.

2. The Court is accordingly not inclined to exercise its discretionary jurisdiction under Article 226 of the Constitution, to interfere in the matter at this stage.

3. Leaving it open to the Petitioners to exhaust the statutory remedies available to them in accordance with law, the petition is dismissed."

3. After the passing of the said order, petitioners approached the Debts Recovery Tribunal-II, Delhi, by filing SA No.4 of 2021 and SA No.5 of 2021. The said Tribunal granted interim protection to the petitioners vide order dated 12.02.2021 (Annexures P-18 and P-19) respectively. During the interregnum, respondents filed an application under Section 14 of the SARFAESI Act before the District Magistrate, Gurugram, for taking possession of the secured assets, which belong to the petitioners, who are sureties/guarantors. The said application has been allowed vide order dated 09.03.2021 (Annexure P-20) vide which the possession of the secured assets i.e. immovable properties have been ordered to be taken and handed over to the respondents. It is this order, which has been challenged by the petitioners asserting that when there was an interim order passed by the Debts Recovery Tribunal-II, Delhi, the said order could not have been passed by the District Magistrate, Gurugram.

4. Counsel for the petitioners asserts that the order under Section 14 of the SARFAESI Act could not have been passed by the District Magistrate, Gurugram, especially in the light of the fact that the matter was pending before the Debts Recovery Tribunal-II, Delhi and an interim order has been passed.

5. To an objection raised by this Court with regard to the petitioners approaching this Court by way of the present writ petition, especially when the matter is pending before the Debts Recovery Tribunal-II, Delhi, as also keeping in view the earlier order dated 21.12.2020 (Annexure P-17) passed by this Court, counsel for the petitioners asserts that the petitioners have no remedy but to approach this Court by way of the present writ petition under Article 226/227 of the Constitution. In support of this contention, he has placed reliance upon the judgment of the Hon'ble Supreme Court in the case of Harshad Govardhan Sondagar Versus International Assets Reconstruction Company Ltd. and others,

2014 (6) SCC 1. His submission is that the petitioners being guarantors cannot approach the Debts Recovery Tribunal and, therefore, no remedy is available under Section 17 of the SARFAESI Act to the petitioners as the said remedy is only available to the borrower. He thus contends that the present writ petition would be maintainable and the relief as prayed for by the petitioners deserves to be granted.

6. We have considered the submissions made by learned counsel for the petitioners and with his assistance, have gone through the pleadings as well as the judgment of Hon'ble Supreme Court, referred to above.

7. The facts are not in dispute and, therefore, for brevity are not being referred to again except that the petitioners had earlier approached this Court by filing CWP No.22078 of 2020, which was dismissed by this Court vide order dated 21.12.2020 (Annexure P-17) relegating the petitioners to pursue the statutory remedy under the SARFAESI Act before the Debts Recovery Tribunal. It is also not in dispute that the petitioners, in pursuance thereto, had approached the Debts Recovery Tribunal-II, Delhi, the territorial jurisdiction of which is under question as raised by the respondents but the fact remains that the appeals are pending before the Debts Recovery Tribunal for now. Interim orders dated 12.02.2021 (Annexures P-18 and P-19) were passed. The matter thereafter came up for hearing on 08.03.2021, when following order was passed:-

"This matter has been taken up through video conferencing.

Heard both sides, the applicant is directed to file their evidence in the registry and exhibit the same before Registrar on 11.03.2021 and thereafter, the matter be listed before this Tribunal on 16.03.2021 for hearing. In the meantime, the respondent FI shall go ahead with the sale as per the schedule but shall not confirm the sale till the next date"

8. In the light of the above order, it cannot be said that the impugned order dated 09.03.2021 passed by District Magistrate is in violation of the order of the Debts Recovery Tribunal-II, Delhi. Even if assuming that the petitioners' assertion is accepted, the remedy of challenge of the order before the present Court would not be sustainable.

9. As regards the contention raised by the counsel for the petitioners that they do not have the remedy available to them as per the provisions of Section 17 of the SARFAESI Act, suffice it to say that the said assertion of the petitioners is misplaced firstly in the light of the fact that their appeals are already pending before the Debts Recovery Tribunal-II, Delhi and secondly, the Hon'ble Supreme Court in the case of Kaniyalal Lalchand Sachdev & others Versus State of Maharashtra, 2011 (2) SCC 782 relying upon an earlier decision held that the remedy under Section 17 of the SARFAESI Act is available to an aggrieved party even against action under Section 14 of the Act and it was observed as under:-

"19. In *Authorised Officer, Indian Overseas Bank & Anr. v. Ashok Saw Mill*, (2009)

8 SCC 366 the main question which fell for determination was whether the DRT would have jurisdiction to consider and adjudicate post Section 13(4) events or whether its scope in terms of Section 17 of the Act will be confined to the stage contemplated under Section 13(4) of the Act ?

On an examination of the provisions contained in Chapter III of the Act, in particular Sections 13 and 17, this Court, held as under :

"35. In order to prevent misuse of such wide powers and to prevent prejudice being caused to a borrower on account of an error on the part of the banks or financial institutions, certain checks and balances have been introduced in Section 17 which allow any person, including the borrower, aggrieved by any of the measures referred to in sub-section (4) of Section 13 taken by the secured creditor, to make an application to the DRT having jurisdiction in the matter within 45 days from the date of such measures having taken for the reliefs indicated in sub-section (3) thereof.

36. The intention of the legislature is, therefore, clear that while the banks and financial institutions have been vested with stringent powers for recovery of their dues, safeguards have also been provided for rectifying any error or wrongful use of such powers by vesting the DRT with authority after conducting an adjudication into the matter to declare any such action invalid and also to restore possession even though possession may have been made over to the transferee.

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39. We are unable to agree with or accept the submissions made on behalf of the appellants that the DRT had no jurisdiction to interfere with the action taken by the secured creditor after the stage contemplated under Section 13(4) of the Act. On the other hand, the law is otherwise and it contemplates that the action taken by a secured creditor in terms of Section 13(4) is open to scrutiny and cannot only be set aside but even the status quo ante can be restored by the DRT."

20. We are in respectful agreement with the above enunciation of law on the point. It is manifest that an action under Section 14 of the Act constitutes an action taken after the stage of Section 13(4), and therefore, the same would fall within the ambit of Section 17(1) of the Act. Thus, the Act itself contemplates an efficacious remedy for the borrower or any person affected by an action under Section 13(4) of the Act, by providing for an appeal before the DRT."

10. In the light of the above judgment of the Hon'ble Supreme Court, we do not agree with the contention of the counsel for the petitioners that the petitioners do not have a remedy of appeal available under Section 17 of the SARFAESI Act. No doubt, this Court has the discretion to exercise its powers under Article 226/227 of the Constitution of India, however, we do not find this case to be of such an exceptional nature to exercise our said powers, especially in the light of the earlier order passed by this Court.

11. As regards the judgment of Hon'ble Supreme Court in Harshad Govardhan

Sondagar's case (supra), the said judgment deals with the right of a lessee relating to the property mortgaged. The Hon'ble Supreme Court was dealing with the provisions of Transfer of Property Act vis-à-vis the SARFAESI Act. It is in these circumstances that the Hon'ble Supreme Court had proceeded to hold that the lessee would not have the remedy of appeal under Section 17 of the SARFAESI Act, which is not the position in the present case, where the petitioners are the guarantors/sureties, who stand on a different footing than a lessee and, therefore, the said judgment would not be of any help to the petitioners.

12. In the light of the above, we do not find any merit in the present writ petition and, therefore, dismiss the same.